

A G Contract No : KR04-0287TRN  
ADOT ECS FILE No : JPA 04-006  
Project: SB Left & NB Right Turn Lanes  
Section: SR 69 at Bradshaw Rd,  
MP 282 3  
TRACS No.: H6295 01C  
BUDGET SOURCE ITEM # 74804

## AGREEMENT

BETWEEN  
THE ARIZONA DEPARTMENT OF TRANSPORTATION  
AND  
QUAILWOOD MEADOWS LLC

THIS AGREEMENT is entered into May 26, 2004 between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State/ADOT") and QUAILWOOD MEADOWS LLC, A DELAWARE LIMITED LIABILITY COMPANY, acting by and through its BOARD OF DIRECTORS ("the Developer"), collectively "the Parties"

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State
2. The Developer has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Developer
3. Incident to the State's proposed improvements on State Route 69 (SR 69), the Developer has requested the State incorporate the design and construction of a Northbound right turn and a Southbound left turn lane on SR 69, at Bradshaw Road (M P 282 3), as shown on Exhibit B, at an estimated cost of \$168,483.75, including a fixed rate of 15% for construction engineering and administration costs, herein referred to as the "Project". A summary of costs associated with the Project is detailed as shown on Exhibit A, attached hereto and made a part hereof. The purpose of this agreement is to define each Party's responsibilities for the Project.
4. The Parties hereto agree and acknowledge to the following conditions: 1) the amounts referenced in this Agreement are subject to change; 2) the estimated amounts may change substantially; and 3) the Parties will perform their responsibilities consistent with this Agreement.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 26852  
Filed with the Secretary of State  
Date Filed: 05/26/04

Janice K. Brewer  
Secretary of State

By: David D. Greenwald

**II. SCOPE OF WORK**

## 1. The State will:

a. Receive \$168,483.75 from the Developer for the estimated cost of the Project, including a fixed rate of 15% for construction engineering and administration costs, as shown on Exhibit A.

b. Review the design plans, specifications and other such documents and services required for the construction bidding and construction of the Project.

c. Upon concurrence and on behalf of the Developer, incorporate the Developer's design plans, call for bids, and prior to award of the Project, notify the Developer in the event the actual amount to be awarded is greater than the Developer's deposit, referenced in II.1.a above. Award one or more construction contract(s) to accomplish the Project, administer it and make all payments to the contractor(s).

d. Provide the Developer with a recapitulation of the actual costs for the Project, to include, but not limited to: the construction and post design costs, including a fixed rate of 15% for construction engineering and administration costs. Through its assigned ADOT Project Manager and Resident Engineer, reimburse or invoice the Developer for any difference between the amount of the Developer's initial deposit and the final Project costs upon completion.

e. Not be obligated to expend State funds to accomplish the Project, should unforeseen conditions or circumstances increase the cost of the Project required by a change in the extent or scope of the work called for in this agreement.

f. Upon completion, approve and accept the Project on behalf of the parties hereto and provide maintenance inside the State's rights of way.

## 2. The Developer will:

a. Prepare and provide to State standards design plans, specifications and other such documents and services required, to be incorporated into the construction contract documents for the construction bidding and construction of the Project.

b. Be responsible for actual costs for the Project including a fixed rate of 15% for construction engineering and administration costs. In the event the actual bid exceeds the amount of its initial deposit, shall remit to the State prior to award of the Project, the necessary funds, as required for the State to accomplish construction of the Project. Be responsible for any contractor claims for extra compensation, attributable to the Developer.

c. In the event the Developer cancels the Project, be responsible for all costs up to the time of cancellation.

d. Upon completion and acceptance of the Project by the State, provide maintenance to the Project outside the State's rights of way.

**III. MISCELLANEOUS PROVISIONS**

1. This agreement shall become effective upon signature and date of the Parties to this agreement.

2 The State assumes no financial obligation or liability under this agreement, or for any resulting construction project. The Developer, in regard to the Developer's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Developer and that to the extent permitted by law, the Developer hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage or vicarious liability incurred by any of the above and from any other damage or to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees. The Foregoing indemnity and defense obligations do not apply to any loss, cost, liability, or expense to the extent arising from or related to the negligent acts or omissions of the state or its independent contractor.

3. This agreement shall remain in force and effect until completion of the Project and all payments; provided, however, that this agreement, except any provisions herein for maintenance responsibilities provided by the Developer outside of the State's right of way, may be cancelled with sixty days written notice to the other party prior to the advertisement of a construction contract.

4. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17th Avenue, Mail Drop 616E  
Phoenix, AZ 85007

Quailwood Meadows LLC  
Brian Rhoton  
3536 Concourse St. Suite 300  
Ontario, CA 91764  
Attn: Chief Legal Officer

10 Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein is the written determinations of each party's legal counsel, that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form

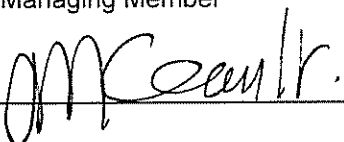
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IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written

**Quailwood Meadows LLC a,**  
Deleware Limited Liability Company

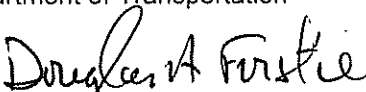
By: Empire Land, LLC, a  
California Limited Liability Company  
Its Sole Member

By: Empire Partners, Inc, a California Corporation  
Its Managing Member

By 

Its. **Jeffrey M. Gault**  
**President & Chief Operating Officer**

**STATE OF ARIZONA**  
Department of Transportation

By   
**DOUGLAS A. FORSTIE**  
Deputy State Engineer, Operations

ATTEST

By   
Secretary

**Larry R. Day**  
Executive Vice President



QUAILWOOD MEADOWS  
RESIDENTIAL ACCESS ROAD  
(STATE ROUTE 69 IMPROVEMENTS)  
ENGINEER'S ESTIMATE

PROJECT NUMBER: 45-101521

9-Dec-03

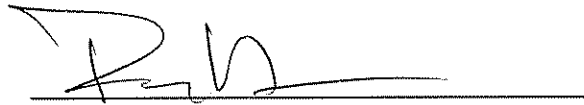
ITEM NO.	QTY.	UNIT	DESCRIPTION	UNIT COST IN FIGURES	TOTAL
			<b>EARTHWORK AND REMOVALS</b>		
2020083	1920	SY	2" Mill (Remove Bituminous Pavement)	\$1.25	\$2,275.00
2020162	1010	SY	Remove Asphalt Concrete Pavement	\$5.00	\$5,050.00
2020201	3340	LF	Sawcut	\$3.00	\$10,020.00
2030301	140	CY	Roadway Excavation	\$30.00	\$4,200.00
			<b>SUBTOTAL EARTHWORK AND REMOVALS</b>		\$19,270.00
			<b>ROADWAY IMPROVEMENTS ON STATE ROUTE 69</b>		
3030022	1,060	CY	16" Aggregate Base	\$25.00	\$26,500.00
4040111	3	TON	Bituminous Tack Coat	\$135.00	\$405.00
4060006	845	TON	5" Asphaltic Concrete (3/4" Mix)	\$45.00	\$38,025.00
4070004	125	TON	1/2" Asphaltic Concrete Friction Course Material (ASPHALT RUBBER)	\$100.00	\$12,500.00
7040003	13,420	LF	Pavement Marking (White Sprayed Thermoplastic)(0.60")	\$0.50	\$6,710.00
7040004	6,640	LF	Pavement Marking (Yellow Sprayed Thermoplastic)(0.60")	\$0.55	\$3,652.00
7050023	14	EA	Pavement Marking (Single Arrow)	\$150.00	\$2,100.00
7050026	5	EA	Pavement Marking (Only)	\$125.00	\$625.00
	1	LS	Traffic Signal Modification (To accommodate SR69 Dual Lefts)	\$25,000.00	\$25,000.00
			<b>Assumptions</b>		
			<b>SUBTOTAL ROADWAY IMPROVEMENTS</b>		\$115,517.00
AC: 145lbs/CF					
ARFC: 59lbs/SY			<b>TOTAL</b>		\$134,787.00
Tack Coat: .075gal/SY					
Tack Coat: 8.33lbs/gal					
			<b>ADOT 15% Construction Administration Fee</b>		\$20,218.05
			<b>10% Contingency</b>		\$13,478.70
			<b>GRAND TOTAL</b>		\$168,483.75

Since the ENGINEER has no control over labor, materials, equipment or services furnished by others or over the Contractor(s) method of determining prices or over the competitive bidding or market conditions, its opinions of probable Project Cost and Construction Cost provided herein are to be made on the basis of its experience and qualifications and represent its best judgment as an experienced and qualified engineer familiar with the construction industry; but the ENGINEER cannot and does not guarantee that proposals, bids or actual Project or Construction Cost will not vary from its opinion of probable cost. If prior to the Bidding or Negotiating Phase, OWNER wishes greater assurance as to a Project Cost, it should employ an independent cost estimator.

APPROVAL OF QUAILWOOD MEADOWS, L.L.C.

I have reviewed the attached proposed agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODEL TRANSPORTATION DIVISION, and the QUAILWOOD MEADOWS, L L C , and declare this agreement to be in proper form and within the powers and authority granted to Quailwood Meadows, L L C , under the laws of the State of Arizona.

DATED this 3<sup>rd</sup> day of May, 2004.

A handwritten signature in black ink, appearing to read "P. Roman", written over a horizontal line.

Attorney

**Paul R. Roman**  
**Director of Legal Affairs**



TERRY GODDARD  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

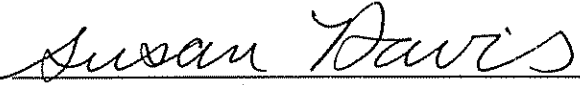
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-0287TRN (JPA 04-006), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: May 18, 2004

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section